Abdul Hakim bin Abdul Wahid v Mas Ermieyati bt Samsudin and another appeal

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NOS 01(i)-4–02 OF 2023(M) AND 02(i)-13–02 OF 2023(T)
TENGKU MAIMUN CHIEF JUSTICE, HASNAH HASHIM AND NORDIN HASSAN FCJJ
14 JUNE 2023

Election — Petition — Defective petition — Allegations of general bribery or general treating and corrupt practice or illegal practice — Preliminary objection regarding timeline of filing election petition — Interpretation of s 38(1)(a) of Election Offence Act 1954 — Preliminary objection regarding insufficiency of material facts and grounds relied on — Whether election petition was filed within prescribed time pursuant to s 38(1) of Election Offences Act 1954 — Whether material facts sufficiently pleaded — Whether s 32(a) and (c) of Election Offences Act 1954 complied with — Whether r 4(1)(b) and (2) of Election Petition Rules 1954 complied with — Election Offences Act 1954 ss 8, 10(a), 32(a), (b) & 38(1)(a) — Election Petition Rules 1954 r 4(1)(b) & (2)

There were two appeals in the present case, both of which related to election petitions filed by the appellants against the respondents. The first appellant and the first respondent were the election candidates for the Parliamentary Constituency of Masjid Tanah, Melaka whereas the second appellant and the second respondent were the election candidates for the Parliamentary constituency of Kemaman. Both the respondents in the present appeals had won the elections in their respective constituencies. Subsequent thereto, the appellants had filed election petitions against the respondents for declarations that the respondents were not duly elected in their respective constituencies and that the said elections were to be declared void. The first appellant had relied on s 32(a) and (c) of the Election Offences Act 1954 ('the EOA') whereas the second appellant had relied on s 32(c) of the EOA. Basically, s 32(a) of the EOA described the offence of general bribery or general treating that affected the result of the election whilst s 32(c) of the EOA was regarding corrupt practice or illegal practice by the candidates or their agents. The respondents had raised preliminary objections against the election petitions filed by the appellants. In the first appellant's election petition, the election judge had allowed the first respondent's preliminary objections on the following grounds: (a) the election petition was filed out of time in contravention with s 38(1)(a) of the EOA; and (b) the non-compliance with s 32(a) and (c) of the EOA as well as r 4(1)(b) of the Election Petition Rules 1954 ('the EPR'). The election judge in the second appellant's election petition had also allowed the second respondent's preliminary objections premised on the non-compliance of s

A 32(a) of the EOA and r 4(1)(b) of the EPR. Aggrieved by the decisions, the appellants filed the present appeals. In the appeal by the first appellant ('the Masjid Tanah's appeal'), the issues raised were the timeline for the presentation of the election petition under s 38(1) of the EOA and the sufficiency of the material facts and grounds relied on in the petition under s 32(a) and (c) of the B EOA and r 4(1)(b) of the EPR. As regards the appeal by the second appellant ('the Kemaman's appeal'), the issue arose was whether the requirement of r 4(1)(b) of the EPR (in relation to sufficiency of the material facts and grounds relied upon in the election petition) had been complied with.

C **Held**, allowing the Masjid Tanah's appeal, allowing the Kemaman's appeal only in respect of the allegation of facts in paras 9–12 and 17–20 of the election petitions, and remitting both the election petitions to the respective High Court to be tried on their merits before a different election judge:

D (1) It was settled law that the statutory requirements of election law were mandatory and must be observed strictly. This was because the parties' rights in the election and election dispute were governed by statute or special law unknown to common law or equity. Therefore, an election petition filed by the petitioner must comply or adhere strictly to the E statutory requirements of the election law, and failing which, the petition would be defective and subject to be struck out without going for a full hearing in a trial (see paras 36–37).

(2) A proviso of a section must be read with the section itself as the proviso, F inter alia, qualified the section. A section with a proviso that formed part of the section must be construed as a whole. In this regard the court was not inclined to agree with the view of the election judge in Masjid Tanah's appeal that proviso (a) of s 38(1) of the EOA must be read independently of the said section. When reading proviso (a) together with s 38(1) of the G EOA, the court found that the words 'since the date aforesaid' in the proviso referred to the date of publication of the election's result in the *Gazette*. Based on the above reasoning, proviso (a) of s 38(1) of the EOA applied to any election petition on grounds of corrupt practice and payment of monies after the date of the publication of the election's result H in the *Gazette*. In such cases, the election petition could be filed within 28 days after the date of such payment or act. This was also consistent with s 10 of the EOA which made an offence for bribery even after an election if such action induced the voters to vote for the respondent and refrain them from voting for other candidates (see paras 43, 46–47 & 50–51). I

(3) Based on the above findings, the issue of redundancy about proviso (a) of s 38(1) of the EOA did not arise. In the present appeal, the date of publication of the result of the election in the *Gazette* was 14 December 2022 and the election petition was filed on 3 January 2023. As such, the

petition was filed within 21 days after the said publication as required under s 38(1) of the EOA. In the circumstances, the election judge erred in applying proviso (a) of s 38(1) and taking into account the alleged bribery on 19 November 2022, the 28 days ended on 17 December 2022, and therefore ruled that the filing of the election petition on 3 January 2023 was out of time (see paras 52–53).

(4) On the sufficiency of material facts and grounds, it was trite law that the election petition must contain the brief facts and grounds relied upon as required under r 4(1)(b) of the EPR. Further, an election of a candidate could be declared void on the grounds as mentioned under s 32(a) to (e) of the EOA, and for these appeals the relevant grounds relied on were s 32(a) and (c) of the EOA. To comply with the requirement of r 4(1)(b) of the EPR, the pleaded facts and grounds relied on must be sufficient to constitute a cause of action and make out a case against the respondent. With respect to the alleged offence of bribery or corrupt practice, what was pertinent was the brief facts that constituted the elements of the offence of bribery or treating and how the respondent had offended the law. This was pertinent for the respondent to answer the charge or charges against them (see paras 54–56).

(5) In relation to the Masjid Tanah's appeal, having considered the material facts in the election petition, the court found that the facts and grounds pleaded were sufficient to constitute a cause of action on the offence of bribery under s 10(a) of the EOA. All the necessary elements for the said offence had been pleaded which were at the date, time, and place, the respondent and through her agent had given monies to the registered voters of the Masjid Tanah Parliamentary Constituency to induce them to vote for the respondent. There was no ambiguity in the charges against the respondent as pleaded for the respondent to answer the case against her in the trial. The court further found that the material facts pleaded in the election petition if proven were sufficient to establish the offence of treating under s 8 of the EOA. All the elements of the offence of treating and how the offence was allegedly committed were sufficiently pleaded. In the circumstances, the appellant's election petition had not suffered any defect of insufficient material facts or grounds that infringed r 4(1)(b) of the EPR and fulfilled the requirements of s 32(a) and (c) of the EOA. As such the election judge erred in his decision that there were insufficient material particulars in the appellant's petition (see paras 62 & 65–66).

(6) There was no requirement under the election law in particular r 4(1)(b) of the EPR that the election petition must contain the particulars of how the petitioner's agent was appointed. What was required, inter alia, was to briefly state the facts and grounds relied on to sustain the prayer. Therefore, the failure to state the particulars of the manner the agents of

the respondent were appointed or employed was not fatal or infringed any provision of the election law that made the election petition defective. In relation to the contention that there was overlapping of subject matter in the election petition, the court found that the material facts on the offence of bribery were placed under para 7 of the election petition whereas the relevant material facts for the offence of treating were pleaded separately under para 8. The court found that the petition did confine to a distinct portion of the subject, as such, the contention that the petition infringed r 4(2) of EPR was without merit (see paras 71 & 73–75).

(7) With regards to the Kemaman's appeal particularly the allegation of bribery in para 7 of the second appellant's election petition, the court found that the missing link to establish the cause of action against the respondent for the offence of bribery under s 10 of the EOA was the failure to identify the alleged agents of the respondent. As s 10, inter alia, made it an offence for the respondent by any other person, including the agents, to give bribe monies, a close nexus or relationship between the agent and the respondent needed to be shown. The identity of the agent ought to be pleaded to enable the respondent to answer the allegation and the opportunity to refute them for being the respondent's agent. The omission to name the respondent's agent made the facts pleaded insufficient to sustain the prayer required under r 4(1)(b) of the EPR (see para 78).

(8) As for para 9 of the second appellant's election petition, the court had considered the pleaded fact in the election petition and found that, except for 'Program Bersama Menteri Besar Terengganu', the elements of bribery and agency were pleaded sufficiently. The time, place, and the respondent's agent had been named. The payments of monies to registered voters to induce them to vote for the respondent were also specified clearly. Further, the group of receivers of the alleged corrupt payments had also been identified, they were the attendees of the respective event. The case against the respondent was clearly pleaded and could be answered by the respondent without any confusion or difficulty (see para 81).

[Bahasa Malaysia summary

Terdapat dua rayuan dalam kes ini, kedua-duanya berkaitan petisyen pilihan raya yang difailkan oleh perayu-perayu terhadap responden-responden. Perayu pertama dan responden pertama ialah calon-calon pilihan raya bagi Kawasan Parlimen Masjid Tanah, Melaka manakala perayu kedua dan responden kedua ialah calon-calon pilihan raya bagi kawasan Parlimen Kemaman. Kedua-dua responden dalam rayuan-rayuan semasa telah memenangi pilihan raya di kawasan masing-masing. Selepas itu, perayu-perayu telah memfailkan petisyen pilihan raya terhadap responden-responden untuk pengisytiharan bahawa

responden-responden tidak dipilih dengan sewajarnya di kawasan pilihan raya masing-masing dan bahawa pilihan raya tersebut diisytiharkan tidak sah. Perayu pertama telah bergantung pada s 32(a) dan (c) Akta Kesalahan Pilihan Raya 1954 ('AKPR') manakala perayu kedua telah bergantung pada s 32(c) AKPR. Pada asasnya, s 32(a) AKPR menerangkan kesalahan penyogokan am atau penjamuan am yang menjejaskan keputusan pilihan raya manakala s 32(c) AKPR adalah mengenai perbuatan rasuah atau perbuatan yang menyalahi undang-undang oleh calon-calon atau ejen-ejen mereka. Responden-responden telah membangkitkan bantahan awal terhadap petisyen pilihan raya yang difailkan oleh perayu-perayu. Dalam petisyen pilihan raya perayu pertama, hakim pilihan raya telah membenarkan bantahan awal responden pertama atas alasan-alasan berikut: (a) petisyen pilihan raya telah difailkan di luar masa yang bertentangan dengan s 38(1)(a) AKPR; dan (b) ketidakpatuhan s 32(a) dan (c) AKPR serta k 4(1)(b) Kaedah-Kaedah Petisyen Pilihan Raya 1954 ('KPPR'). Hakim pilihan raya dalam petisyen pilihan raya perayu kedua juga telah membenarkan bantahan awal responden kedua berdasarkan ketidakpatuhan s 32(a) AKPR dan k 4(1)(b) KPPR. Terkilan dengan keputusan tersebut, perayu-perayu memfailkan rayuan-rayuan semasa. Dalam rayuan oleh perayu pertama ('rayuan Masjid Tanah'), isu yang dibangkitkan ialah garis masa untuk pemfailan petisyen pilihan raya di bawah s 38(1) AKPR dan kecukupan fakta material dan alasan-alasan yang disandarkan dalam petisyen di bawah s 32(a) dan (c) AKPR dan k 4(1)(b) KKPR. Berkenaan dengan rayuan oleh perayu kedua ('rayuan Kemaman'), isu yang timbul ialah sama ada keperluan k 4(1)(b) KPPR (berkaitan dengan kecukupan fakta material dan alasan-alasan yang disandarkan dalam petisyen pilihan raya) telah dipatuhi.

Diputuskan, membenarkan rayuan Masjid Tanah, membenarkan rayuan Kemaman hanya berhubung dengan pertikaian fakta di dalam perenggan 9–12 dan 17–20 petisyen pilihan raya sahaja, dan mengembalikan kedua-dua petisyen pilihan raya kepada Mahkamah Tinggi yang berkaitan untuk dibicarakan atas merit di hadapan hakim pilihan raya yang berbeza:

(1) Sudah menjadi undang-undang yang mantap bahawa keperluan statutori undang-undang pilihan raya adalah wajib dan perlu dipatuhi dengan ketat. Ini kerana hak parti dalam pilihan raya dan pertikaian pilihan raya dikawal oleh statut atau undang-undang khas yang tidak diketahui oleh undang-undang biasa atau ekuiti. Oleh itu, petisyen pilihan raya yang difailkan oleh pempetisyen perlu mengikuti atau mematuhi dengan ketat keperluan statutori undang-undang pilihan raya, dan jika gagal, petisyen tersebut akan menjadi cacat dan perlu dibatalkan tanpa melalui pendengaran penuh dalam perbicaraan (lihat perenggan 36–37).

(2) Proviso kepada seksyen perlu dibaca dengan seksyen itu sendiri kerana proviso antara lain mengecualikan seksyen tersebut. Sesuatu seksyen dengan proviso yang membentuk sebahagian daripada seksyen tersebut

A mesti ditafsirkan secara keseluruhan. Dalam hal ini mahkamah tidak cenderung untuk bersetuju dengan pandangan hakim pilihan raya dalam rayuan Masjid Tanah bahawa proviso (a) s 38(1) AKPR mesti dibaca secara berasingan daripada seksyen tersebut. Apabila membaca proviso (a) bersama s 38(1) AKPR, mahkamah mendapati bahawa perkataan B 'semenjak tarikh yang disebut terdahulu' dalam proviso tersebut merujuk kepada tarikh penyiaran keputusan pilihan raya dalam Warta. Berdasarkan alasan di atas, proviso (a) s 38(1) AKPR terpakai untuk mana-mana petisyen pilihan raya atas alasan perbuatan rasuah dan pembayaran wang selepas tarikh penyiaran keputusan pilihan raya dalam C Warta. Dalam kes sedemikian, petisyen pilihan raya boleh difailkan dalam tempoh 28 hari selepas tarikh pembayaran atau perbuatan tersebut. Ini juga selaras dengan s 10 AKPR yang menjadikan rasuah sebagai satu kesalahan walaupun selepas pilihan raya jika tindakan sedemikian mendorong pengundi untuk mengundi responden dan D menghalang mereka daripada mengundi calon lain (lihat perenggan 43, 46–47 & 50–51).

(3) Berdasarkan penemuan-penemuan di atas, isu redundansi mengenai proviso (a) s 38(1) AKPR tidak timbul. Dalam rayuan ini, tarikh E penyiaran keputusan pilihan raya dalam Warta ialah 14 Disember 2022 dan petisyen pilihan raya telah difailkan pada 3 Januari 2023. Oleh itu, petisyen tersebut telah difailkan dalam tempoh 21 hari selepas penyiaran tersebut seperti yang dikehendaki di bawah s 38(1) AKPR. Dalam keadaan itu, hakim pilihan raya terkhilaf dalam menggunakan proviso F (a) s 38(1) dan mengambil kira dakwaan rasuah pada 19 November 2022, 28 hari tersebut berakhir pada 17 Disember 2022, dan oleh itu memutuskan bahawa pemfailan petisyen pilihan raya pada 3 Januari 2023 adalah di luar masa yang ditetapkan (lihat perenggan 52–53).

G (4) Berhubung dengan kecukupan fakta dan alasan material, adalah menjadi undang-undang yang mantap bahawa petisyen pilihan raya mesti mengandungi fakta ringkas dan alasan yang disandarkan seperti yang dikehendaki di bawah k 4(1)(b) KPPR. Selanjutnya, pemilihan calon boleh diisytiharkan terbatal atas alasan seperti yang disebut di bawah H s 32(a) hingga (e) AKPR, dan untuk rayuan ini alasan berkaitan yang menjadi sandaran ialah s 32(a) dan (c) AKPR. Untuk mematuhi keperluan k 4(1)(b) KPPR, fakta yang diplid dan alasan yang disandarkan mestilah mencukupi untuk membentuk kausa tindakan dan membuat kes terhadap responden. Berkenaan dengan dakwaan I kesalahan rasuah atau perbuatan rasuah, apa yang penting ialah fakta ringkas yang membentuk unsur-unsur kesalahan rasuah atau perlakuan dan bagaimana responden telah melanggar undang-undang. Ini adalah penting untuk responden menjawab pertuduhan atau pertuduhan-pertuduhan terhadap mereka (lihat perenggan 54–56).

(5) Berhubung rayuan Masjid Tanah, setelah mempertimbangkan fakta material dalam petisyen pilihan raya, mahkamah mendapati fakta dan alasan yang diplid adalah mencukupi untuk membentuk kausa tindakan bagi kesalahan rasuah di bawah s 10(a) AKPR. Semua elemen yang diperlukan untuk kesalahan tersebut telah diplid iaitu pada tarikh, masa dan tempat tersebut, responden dan melalui ejennya telah memberikan wang kepada pengundi berdaftar Kawasan Parlimen Masjid Tanah untuk mendorong mereka mengundi responden. Tiada kekaburan dalam pertuduhan terhadap responden seperti yang diplidkan untuk responden menjawab kes terhadapnya dalam perbicaraan. Mahkamah selanjutnya mendapati fakta material yang diplidkan dalam petisyen pilihan raya jika terbukti adalah mencukupi untuk membuktikan kesalahan penjamuan di bawah s 8 AKPR. Semua elemen kesalahan penjamuan dan bagaimana kesalahan tersebut didakwa dilakukan telah diplid secukupnya. Dalam keadaan tersebut, petisyen pilihan raya perayu tidak mengalami apa-apa kecacatan fakta atau alasan material yang tidak mencukupi yang melanggar k 4(1)(b) KPPR dan memenuhi keperluan s 32(a) dan (c) AKPR. Oleh yang demikian, hakim pilihan raya terkhilaf dalam keputusannya bahawa tidak terdapat butiran material yang mencukupi dalam petisyen perayu (lihat perenggan 62 & 65–66).

(6) Tiada keperluan di bawah undang-undang pilihan raya khususnya k 4(1)(b) KPPR bahawa petisyen pilihan raya mesti mengandungi butir-butir bagaimana ejen pempetisyen dilantik. Apa yang diperlukan antara lain, adalah untuk menyatakan secara ringkas fakta dan alasan yang disandarkan untuk menyokong permohonan tersebut. Oleh itu, kegagalan untuk menyatakan butir-butir cara ejen responden dilantik atau diambil bekerja tidak membawa kemudharatan atau melanggar mana-mana peruntukan undang-undang pilihan raya yang menyebabkan petisyen pilihan raya cacat. Berhubung dengan dakwaan bahawa terdapat pertindihan perkara dalam petisyen pilihan raya, mahkamah mendapati fakta material kesalahan rasuah diletakkan di bawah perenggan 7 petisyen pilihan raya manakala fakta material yang berkaitan bagi kesalahan penjamuan telah diplid secara berasingan di bawah perenggan 8. Mahkamah mendapati bahawa petisyen tersebut telah mengklasifikasikan kepada bahagian berbeza subjek tersebut, oleh itu, pertikaian bahawa petisyen tersebut melanggar k 4(2) KPPR adalah tidak mempunyai merit (lihat perenggan 71 & 73–75).

(7) Berkenaan dengan rayuan Kemaman khususnya dakwaan rasuah dalam perenggan 7 petisyen pilihan raya perayu kedua, mahkamah mendapati perkaitan yang hilang untuk mewujudkan kausa tindakan terhadap responden bagi kesalahan rasuah di bawah s 10 AKPR adalah kegagalan untuk mengenal pasti ejen responden yang didakwa. Oleh kerana s 10 antara lain menjadikan satu kesalahan bagi responden melalui mana-mana orang lain, termasuk ejen, untuk memberi wang rasuah,

hubungan rapat atau hubungan antara ejen dan responden perlu ditunjukkan. Identiti ejen perlu diplid untuk membolehkan responden menjawab dakwaan dan memberikan peluang untuk menyangkal mereka sebagai ejen responden. Peninggalan untuk menamakan ejen responden menyebabkan fakta yang diplid tidak mencukupi untuk mengekalkan permohonan seperti yang diperlukan di bawah k 4(1)(b) KPPR (lihat perenggan 78).

(8) Bagi perenggan 9 petisyen pilihan raya perayu kedua, mahkamah telah mempertimbangkan fakta yang diplid dalam petisyen pilihan raya dan mendapati, kecuali 'Program Bersama Menteri Besar Terengganu', unsur-unsur rasuah dan agensi telah diplid secukupnya. Masa, tempat dan ejen responden telah dinamakan. Bayaran wang kepada pengundi berdaftar untuk mendorong mereka mengundi responden juga dinyatakan dengan jelas. Selain itu, kumpulan penerima bayaran yang didakwa rasuah juga telah dikenal pasti, mereka adalah peserta bagi setiap majlis tersebut. Kes terhadap responden jelas diplid dan boleh dijawab oleh responden tanpa apa-apa kekeliruan atau kesulitan (lihat perenggan 81).]

Cases referred to

Ahmad Jamaluddin bin Abd Majid v Rafidah bt Aziz & Ors [2009] 2 MLJ 646; [2009] 2 CLJ 785, FC (refd)

Ali Amberan v Tunku Abdullah [1970] 2 MLJ 15b (refd)

Ang Thye Chin lwn Chua Kow & Lagi [1996] 1 CLJ 49, HC (refd)

Asmara bin Abdul Rahman v Musa bin Aman & Ors [2019] 8 MLJ 92; [2019] 1 CLJ 75, HC (refd)

Chor Phaik Har v Farlim Properties Sdn Bhd [1997] 3 MLJ 188; [1994] 4 CLJ 285, FC (refd)

Dato' Ismail bin Kamus v Pegawai Pengurus Pilihan Raya, Zainal Abidin bin Azim & Ors [2005] 3 MLJ 193; [2005] 2 CLJ 237, FC (refd)

Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors [1985] 2 MLJ 35; [1985] 1 CLJ 511, SC (refd)

Gan Joon Zin v Fong Kui Lun & Ors [2004] 4 CLJ 729, FC (refd)

Gubay v Kington (Inspector of Taxes) [1984] 1 WLR 163, HL (refd)

Jennings and another v Kelly [1940] AC 206, HL (refd)

Khairuddin bin Abu Hassan v Datuk Seri Haji Ahmad Hamzah & Ors and another appeal [2019] MLJU 2177; [2019] 9 CLJ 315, FC (refd)

Lee Kew Sang v Timbalan Menteri Dalam Negeri Malaysia & Ors [2005] 2 MLJ 631; [2005] 3 CLJ 914, HC (refd)

Mahari bin Endut v Dato' Hj Mat Razali bin Kassim & Ors [2009] 5 MLJ 153, FC (refd)

Mahdi Hasan v Ahmad Zahid Hamidi [2014] 1 LNS 183, HC (folld)

Mohamad Ali Mohamad v Dr Mohd Aleef Yusop & Ors [2022] 1 LNS 410, HC (folld)

Mohd Sazali bin Kamilan v Nurul Izzah bt Anwar & Ors [2013] MLJU 1111; [2013] 9 CLJ 782, HC (refd)
Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors [2009] 3 MLJ 589; [2009] 3 CLJ 221, FC (refd)
Mohd Zaid bin Ibrahim v P Kamalanathan a/l P Panchanathan & Ors [2010] 6 MLJ 363, HC (refd)
Pengkalan Kota bye-election Teoh Teik Huat, Re v Lim Kean Siew & Anor [1981] 1 MLJ 265; [1981] 1 LNS 1 (refd)
Raymond bin Ahuar v Arthur Joseph Kurup & Ors [2018] MLJU 1831; [2018] 1 LNS 1914, HC (folld)
Sani bin Miasin v Yusof @ Josree bin Yacob & Ors [2021] MLJU 22; [2021] 1 LNS 62, HC (refd)
Tan Sri Eric Chia Eng Hock v Public Prosecutor (No 1) [2007] 2 MLJ 101; [2007] 1 CLJ 565, FC (refd)
Tan Sri Joseph Kurup v Danny Anthony Andipai & Anor [2009] 3 MLJ 1, FC (refd)
Wan Sagar bin Wan Embong v Harun bin Taib [2008] 6 MLJ 473; [2008] 5 CLJ 14, FC (distd)
Yusuf Abdul Rahman v Abdul Ajis Abdul Majeed & Anor [2000] 5 CLJ 215, HC (folld)

Legislation referred to

Election Offences Act 1954 ss 8, 10, 10(a), (c), (d), (e), (g), (h), 11(1)(b), 32(a), (b), (c), (d), (e), 38(1), (1)(a), (1)(b)(ii)
Election Petition Rules 1954 rr 4(2), 4(1)(b), 5, 9, 15, 15(1)
Stamp Act 1949

Appeal from: *Awang Hussaini bin Sahari v Shahelmey bin Yahya & Ors* [2023] MLJU 1086 (High Court, Sibu) and *Wan Mohamad Hisham bin Wan Abdul Hamid lwn Che Alias bin Hamid* [2023] MLJU 410 (High Court, Kuala Terengganu)

Mohd Hafarizam bin Harun (with Rosfinah bt Rahmat, Mohd Khairul Nizam bin Abdul Kadir, Wan Hamidah bt Wan Ismail, Nor Hazira bt Abu Haiyan dan Muhammad Amin bin Othman) (Rosfinah & Co) in Civil Appeal No 01(i)-4–02 of 2023(M) for the appellant.
Yusrizal bin Yusoff (with Mohd Faizi bin Che Abu, Wan Rohimi bin Wan Daud dan Ahmad Lutfi bin Awang) (Tengku Amalin & Faizi) in Civil Appeal No 01(i)-4–02 of 2023(M) for the respondent.
Mohd Hafarizam bin Harun (with Datuk Abu Bakar Isa Ramat, Mohamed Baharudeen bin Mohamed Ariff, Norhazira Abu Haiyan dan Muhammad Amin bin Othman) (Hafarizam Wan & Aisha Mubarak) in Civil Appeal No 02(i)-13–02 of 2023(T) for the appellant.
Wan Rohimi bin Wan Daud (with Saiffuddin bin Othman & Mohd Faizi bin Che

Abu) (Wan Abd Muttalib) in Civil Appeal No 02(i)-13–02 of 2023(T) for the respondent:

Nordin Hassan FCJ (delivering judgment of the court):

INTRODUCTION

[1] On 2 May 2023, two appeals were argued together before us concerning the decisions of the election judges in allowing the respondents' preliminary objections and striking out the election petitions filed by the applicants. The appeals are as follows:

(a) *Abdul Hakim bin Abdul Wahid v Mas Ermieyati bt Samsudin* (Appeal No 01(i)-4–02 of 2023(M)) — Parliamentary Constituency of Masjid Tanah, Melaka ('the Masjid Tanah's appeal'); and

(b) *Wan Mohammad Hisham bin Wan Abdul Hamid v Che Alias bin Hamid* (Appeal No 02(i)-13–02 of 2023(T)) — Parliamentary Constituency of Kemaman, Terengganu ('the Kemaman's appeal').

[2] Having considered the appeal records and the parties' written as well as oral submissions in both the appeals, we unanimously allowed both appeals. Our analysis and reasons are as follows.

THE BACKGROUND FACTS

The Masjid Tanah's appeal

[3] Abdul Hakim bin Abdul Wahid, the appellant, was a Barisan Nasional ('BN') candidate who stood for election in the 15th General Election ('GE15') for the Parliamentary Constituency of Masjid Tanah, Melaka ('P134'). The GE 15 was held on 19 November 2022 with three other candidates including the respondent from Perikatan Nasional ('PN'). The appellant obtained 21,193 votes whilst the respondent garnered 25,604 votes and declared as the winner of the Masjid Tanah seat with a majority of 4,411 votes.

[4] On 14 December 2022, the results of the GE15 were published in the *Gazette*.

[5] On 3 January 2023, the appellant filed an election petition at the Melaka High Court under s 32(a) and (c) of the Election Offences Act 1954 ('the EOA'). In the election petition, the appellant sought for, inter alia, declarations that the respondent was not duly elected in the GE15 for the Parliamentary Constituency of Masjid Tanah and that the said election be declared void.

[6] Section 32(a) of the EOA provides that the election of a candidate at any election shall be declared void on an election petition on grounds, inter alia, of general bribery or general treating that affects the result of the election whilst s 32(c), on grounds of corrupt practice or illegal practice by the candidate or his agent.

[7] In paras 4.1 and 5.1 of the election petition, the appellant states that the respondent committed an act of bribery during the election by giving monies or valuable consideration to voters to induce the voters to vote for the respondent and refrain from voting for other candidates. Further, in para 4.2, it states that the agent of the respondent has committed bribery by doing the same act where both actions are an offence under s 10(a), (c), (d), (e), (g), or (h) of the EOA and punishable under s 11(1)(b) of the same Act.

[8] Next, para 4.3 of the election petition states that the respondent committed an act of treating the voters to corruptly influence them to vote for the respondent and refrain from voting for the appellant. Paragraph 4.4, further alleged that the agent of the respondent has committed the same act which is an offence under s 8 of the EOA and punishable under s 11(1)(b) of the same Act.

[9] The particulars of the alleged offence of bribery and treating are laid down in paras 7 and 8 of the election petition.

[10] On 20 January 2023 the respondent filed a notice of preliminary objection to the election petition on the following grounds:

(a) the election petition was filed out of time, as it was in breach of ss 38(1)(a) and 38(1)(b)(ii) of the EOA;

(b) the appointment of the appellant's advocate and solicitors were in breach of r 9 of the Election Petition Rules 1954 ('the EPR');

(c) the appellant had failed to satisfy the requirement of s 32(a) and (c) of the EOA and r 4(1)(b) of the EPR; and

(d) the appellant had failed to name the Returning Officer and the Election Commission as respondents in the election petition.

The decision of the election judge

[11] On the issue of whether the election petition was filed out of time, the learned election judge held that the election petition was filed out of time as the election petition which involves corrupt practice must be filed within 28 days from the date of the payment or the act. Consequently, the court has no jurisdiction to hear the election petition. In coming to this decision, the

A election judge was of the view that the proviso in s 38(1)(a) of the EOA must be read independently of s 38(1) of the Act as the proviso qualifies the main section. To interpret it otherwise would render the proviso redundant. The learned election judge cited the Federal Court case of *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188; [1994] 4 CLJ 285 to support his view.

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[12] As regards the appointment of the appellant's counsels, the notices of appointment of the counsels were not duly stamped with the duty payable for such document and therefore in breach of r 9 of the EPR. The learned election judge accepted the submission by the appellant that there is no requirement C under the Stamp Act 1949 for the stamping of such notices. As such, this ground of preliminary objection was dismissed.

[13] The learned election judge further held that the appellant had failed to D satisfy the requirement of s 32(a) and (c) of the EOA and r 4(1)(b) of the EPR. It was the election judge's view that the appellant had failed to plead the 'appointment' of the agent in the election petition which was said to have acted for the respondent in committing the corrupt practice. As such, the appellant had not established the nexus or connection between the agent and the E respondent. The election judge further held that the appellant had failed to briefly state the facts and grounds relied on to sustain the prayer which infringed r 4(1)(b) of the EPR. In addition, it was held that there was a lumping together of the grounds in s 32(a) and (c) which is contrary to r 4(2) of the EPR that, inter alia, requires the election petition to be confined to a distinct portion F of the subject.

[14] Lastly, the learned election judge held that there is no requirement for the Election Commission or the Returning Officer to be named as respondents in the case as the appellant's complaints in the election petition were not G concerned with the conduct of the election but with corrupt practices by the respondent or her agent.

[15] Based on the two grounds of the preliminary objection raised by the respondent, that is, the time limit under s 38(1)(a) of the EOA and the H non-compliance with s 32(a) and (c), as well as r 4(1)(b) of the EPR, the election judge allowed the preliminary objection and struck out the election petition.

The Kemaman's appeal

I

[16] In the Kemaman's appeal, the appellant was a registered voter and election agent for the Barisan Nasional ('BN') candidate for the GE15 for the Parliamentary Constituency of Kemaman (P040), Dato' Seri Hj Ahmad bin Said. The respondent, Che Alias bin Hamid, a candidate from Parti Islam

SeMalaysia ('PAS') was declared the winner in the election which was held on 15 November 2022 and 19 November 2022 with a majority of 27,179 votes. The result of the election was published in the Gazette on 14 December 2022.

[17] On 3 January 2023, the appellant filed an election petition under s 32(c) of the EOA for corrupt practice allegedly committed by the respondent's agent.

[18] In para 5.1 of the election petition, the appellant states that the respondent committed an act of bribery by giving monies to the voters to induce them to vote for the respondent and to refrain from voting for other candidates. In para 5.2, the appellant alleged that the agent of the respondent also committed the same act and both actions are an offence under s 10(a) of the EOA and punishable under s 11(1)(b) of the same Act.

[19] The detailed particulars of the alleged bribery were laid down in paras 7–20 of the election petition.

[20] In the election petition, the appellant prayed for declarations that the respondent was not duly elected in the GE15 for the Parliamentary Constituency of Kemaman and that the said election was to be declared void.

[21] Thereafter, the respondent raised a preliminary objection to the election petition before the election judge on the following grounds:

(a) the appellant had failed to comply with the timeline under s 38(1)(a) of the EOA;

(b) the appellant failed to comply with the mandatory requirement of s 32(a) of the EOA and r 4(1)(b) of the EPR;

(c) the appointment of the appellant's counsel was invalid as it was in breach of r 9 of the EPR; and/or

(d) the service of the election petition was defective and invalid for non-compliance with r 15 of the EPR.

The decision of the election judge

[22] On the issue of s 38(1)(a), the election judge held that the proviso that allows the appellant to file the election petition within 28 days after the payment of the corrupt practice does not apply in the present case as the act was before the date the election's result was published in the *Gazette*. As such, the date to file the election petition was 21 days after the said publication. Thus, the filing of the election petition was within the period under s 38(1) of the EOA. The cases of *Mahdi Hasan v Ahmad Zahid Hamidi* [2014] 1 LNS 183

A and *Raymond bin Ahuar v Arthur Joseph Kurup & Ors* [2018] MLJU 1831; [2018] 1 LNS 1914 were relied upon by the election judge to support his decision.

B **[23]** Next, the election judge found that the appellant had failed to state in the election petition, firstly, who had given the bribe monies to the voters as mentioned in para 7, either the respondent himself, the agent, or a third party. As regards the act of bribery as stated in paras 9–20, the election judge found, inter alia, that the appellant had failed to particularise the respondent's agent that gave the monies to the voters and the receivers of the said monies. Further, C the appellant failed to establish that the receivers were voters for the Constituency and that the speech by the agents induced the voters to vote for the respondent and refrain them from voting for other candidates. In the circumstances, the election judge held that the appellant had failed to comply with the requirement of s 32(a) of the EOA and r 4(1)(b) of the EPR for not D briefly stating the facts and grounds relied upon to sustain the prayer in the election petition.

[24] As regards the appointment of the appellant's counsel, the learned E election judge was of the view that as there is no requirement under the Stamp Act 1949 to pay any stamp duty for the notice of appointment of counsel, therefore there was no infringement of r 9 of the EPR.

[25] The last ground of the preliminary objection is the issue of defective F service of the election petition, where the service was made by a chambering student. The election judge held that as long as the service was properly made under the law, the person who served the said petition is immaterial. The election judge found that the service made complied with r 15(1) of the EPR and that this ground is without merit.

G

[26] Based on the non-compliance of s 32(a) of the EOA and r 4(1)(b) of the EPR, the election judge allowed the respondent's preliminary objection and struck out the appellant's election petition.

H THE APPEALS BEFORE THIS COURT

[27] In the Masjid's Tanah appeal, the issues raised before us by the appellant were the timeline for the presentation of the election petition under s 38(1) EOA and the sufficiency of the material facts and grounds relied on in the I petition under s 32(a) and (c) of the EOA and r 4(1)(b) of the EPR. In the Kemaman's appeal, the appellant's appeal concerned only one issue which was the sufficiency of the material facts and grounds relied upon in the election petition. The issue is whether the requirement of r 4(1)(b) of the EPR has been complied with.

The Masjid Tanah's appeal

The timeline for the presentation of the election petition

[28] On this issue, counsel for the appellant submitted that the election judge erred in holding that the appellant's election petition was filed out of time as it was filed within the timeline required under s 38(1) which is within 21 days of the date of publication of the result of the election in the *Gazette*. It was contended that proviso (a) of s 38(1) has no application in the present case as the proviso is only applicable for cases where the corrupt practice was committed after the date of the said publication which is not so in the present case as the alleged act was before the date of the said publication. This interpretation, it was argued, is consistent with the keywords in the proviso which states '... since the date aforesaid'. Reliance was placed on the following cases by election judge in *Mahdi Hasan*, *Raymond bin Ahuar*, *Yusuf Abdul Rahman v Abdul Ajis Abdul Majeed & Anor* [2000] 5 CLJ 215, and *Mohamad Ali Mohamad v Dr Mohd Aleef Yusop & Ors* [2022] 1 LNS 410.

[29] Conversely, counsel for the respondent submitted that the decision of the election judge in holding that the filing of the appellant's election petition was out of time is correct as the proviso in s 38(1)(a) of the EOA is applicable, that is the appellant must file the election petition within 28 days from the date of the corrupt payment or act. In support of this contention, the following cases were cited, *Mohd Sazali bin Kamilan v Nurul Izzah bt Anwar & Ors* [2013] MLJU 1111; [2013] 9 CLJ 782, *Sani bin Miasin v Yusof @ Josree bin Yacob & Ors* [2021] MLJU 22; [2021] 1 LNS 62, and *Asmara bin Abdul Rahman v Musa bin Aman & Ors* [2019] 8 MLJ 92; [2019] 1 CLJ 75.

The issue of whether the election petition lack sufficient materials and grounds

[30] As regards this issue, it was the submission of counsel for the appellant that the learned election judge erred in deciding that the election petition lacked sufficient materials and grounds relied on to support the petition and therefore infringed the provisions of s 32(a) and (c) of the EOA and r 4(1)(b) of the EPR. It was submitted that the election petition contained all the brief facts on the corrupt practice and the grounds relied on to sustain the prayer in the election petition. This includes the agent that acted for the respondent. Counsel for the appellant further submitted that other detailed particulars would be presented as evidence in the trial as provided under r 5 of the EPR.

[31] In response, counsel for the respondent contended that the election petition was bereft of material particulars and grounds to sustain its prayer. The election petition, inter alia, failed to state the receiver and the location the payment was made, the number of voters that received the monies, and the

manner the alleged action affects the result of the election. Further, the appellant failed to plead the relationship between the agent and the respondent and the particulars of the appointment of the agent.

[32] In addition, it was further submitted that in the election petition, the grounds for the offences under s 32(a) and (c) were lumped together contrary to r 4(2) of the EPR which requires the paragraph in the petition to be confined to a distinct portion of the subject. As such, it was submitted that the election petition was in breach of s 32(a) and (c) of the EOA, and r 4(1)(b) and 4(2) of the EPR.

The Kemaman's appeal

[33] In this appeal, counsel for the appellant submitted that the learned election judge erred in holding that the election petition was lacking in sufficient material facts and grounds relied on to sustain its prayer. It was submitted that the material facts and grounds pleaded in the election petition are sufficient to constitute a cause of action of corrupt practices for the matter to be tried in a full trial.

[34] On the other hand, it was the respondent's counsel's submission that the election petition lacked material particulars to make out a case of corrupt practice. It was further submitted that the defect in the election petition resulted in the inability of the respondent to present his defence. The respondent's complaints on the election petition can be summarised as follows:

(a) the appellant failed to plead in the election petition, the detailed particulars of the respondent's agent and their appointment as the agent by the respondent;

(b) the appellant failed to plead the time and places of the corrupt practices mentioned in the petition; and

(c) the appellant failed to plead that the receivers of the alleged corrupt payments were registered voters of the Kemaman Constituency.

[35] In the circumstances, counsel for the respondent submitted that the learned election judge was correct in deciding that the appellant's election petition had failed to comply with s 32(a) and (c) of the EOA and r 4(1)(b) of the EPR and consequently struck out the election petition.

THE ANALYSIS AND DECISION OF THIS COURT

[36] To begin with, it is settled law that the statutory requirements of election law are mandatory and must be observed strictly. This is because the

parties' rights in the election and election dispute are governed by statute or special law unknown to common law or equity.

(See *Mahari bin Endut v Dato' Hj Mat Razali bin Kassim & Ors* [2009] 5 MLJ 153 (FC) and *Khairuddin bin Abu Hassan v Datuk Seri Haji Ahmad Hamzah & Ors and another appeal* [2019] MLJU 2177; [2019] 9 CLJ 315 (FC).)

[37] Therefore, an election petition filed by the petitioner must comply or adhere strictly to the statutory requirements of the election law, and failing which, the petition is defective and subject to be struck out without going for a full hearing in a trial.

(See *Ahmad Jamaluddin bin Abd Majid v Rafidah bt Aziz & Ors* [2009] 2 MLJ 646; [2009] 2 CLJ 785 (FC); *Wan Sagar bin Wan Embong v Harun bin Taib* [2008] 6 MLJ 473; [2008] 5 CLJ 14 (FC) and *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729 (FC).)

[38] We now move to the issues raised by parties before us for our determination.

The issue of the timeline for the presentation of the election petition

[39] The timeline for the filing of an election petition is provided for under s 38(1) of the EOA which states:

> 38 Time for presentation.
>
> (1) *Every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the Gazette:*
>
> Provided that —
>
> (a) an election petition questioning the return or the election *upon the ground of a corrupt practice* and *specifically alleging a payment of money* or other act to have been *made or done since the date aforesaid* by the person whose election is questioned or by an agent of the person or with the privity of the person or his election agent in pursuance or in furtherance of such corrupt practice may, so far as respects such corrupt practice, *be presented at any time within twenty-eight days after the date of such payment or act*;
>
> (b) an election petition questioning the return or the election upon an allegation of an illegal practice may, so far as respects such illegal practice, be presented within the time following:
>
> (i) at any time before the expiration of fourteen days immediately after the date of the publication in the Gazette of the notice required by section 24 as to the election expenses of the person whose election is questioned;
>
> (ii) if the election petition specifically alleges a payment of money or other act to have been made or done since the said date by the

A person whose election is questioned or by an agent of the person or with the privity of the person or of his election agent in pursuance or in furtherance of the illegal practice alleged in the petition, the petition may be presented at any time within twenty-eight days immediately after the date of such payment or other act. (Emphasis added.)

B

[40] It is trite that in the interpretation of a statute, where the provision is plain and unambiguous, the court must give effect to its literal or ordinary meaning. This court in *Dato' Ismail bin Kamus v Pegawai Pengurus Pilihan Raya, Zainal Abidin bin Azim & Ors* [2005] 3 MLJ 193; [2005] 2 CLJ 237 cited the case of *Ang Thye Chin lwn Chua Kow & Lagi* [1996] 1 CLJ 49 said this:

C

> *Pertama*, tugas mahkamah bukan membuat undang-undang. Itu tugas Parlimen. *Tugas Mahkamah ialah memberi kesan kepada undang-undang yang dibuat oleh Parlimen sama ada ia bersetuju dengannya atau tidak.*
>
> *Kedua, jika undang-undang yang dibuat oleh Parlimen itu jelas tidaklah perlu bagi Mahkamah merayau ke negara-negara lain* untuk mencari autoriti untuk mentafsirkan peruntukan itu.
>
> *Ketiga, jika terdapat penghakiman Mahkamah di negara ini, apatah lagi jika semua sekata dan bagi tempoh yang lama pula, kita tidak harus meninggalkannya untuk menerima pakai satu tafsiran baru yang dibuat oleh Hakim-Hakim di negara lain dalam memutuskan kes-kes di negara itu mengikut undang-undang negara itu, dan keadaan dan amalan negara itu.* (Emphasis added.)

D

E

F

[41] Reverting to s 38(1) of the EOA, its plain meaning is that every election petition be filed within 21 days of the date of publication of the election result in the *Gazette*. However, there is proviso (a) of s 38(1) of the Act which involves corrupt practice and payment of monies, allowing the presentation of the election petition within 28 days from the date of the payment or act.

G

[42] Here, the dispute arose as to whether proviso (a) of s 38(1) of the Act applies to actions of corrupt practice irrespective of the time it was committed. The appellant contended that the proviso only applies to cases of corrupt practice after the publication of the result in the *Gazette* whilst the respondent was of the view that it applies to all cases of corrupt practice even before the said publication. There are conflicting decisions by the election judges on this issue as can be seen in the authorities cited by both parties.

H

I

[43] In this regard, first and foremost, we need to emphasise here that a proviso of a section must be read with the section itself as the proviso, inter alia, qualifies the section. A section with a proviso that forms part of the section must be construed as a whole.

[44] In the House of Lords case of *Jennings and another v Kelly* [1940] AC 206, it was held as follows:

> *Where a section of an Act of Parliament contains a proviso*, there is no rule that the first part, which may be described as the enacting part, is to be construed without the reference to the proviso. *The section must be construed as a whole, each portion throwing light on the rest.* (Emphasis added.)

(See also *Gubay v Kington (Inspector of Taxes)* [1984] 1 WLR 163.)

[45] *Bennion on Statutory Interpretation* (5th Ed), on pp 723 and 725, states as follows:

> A proviso is a formula beginning 'Provided that ...', which is placed at the end of a section or subsection of an Act, or of a paragraph or sub-paragraph of a Schedule, and the intention of which is to narrow the effect of the preceding words.
>
> ...
>
> *In a case of a proviso, the usual rule applies that an Act is to be construed as a whole. A section containing a proviso is also to be construed as a whole, within the Act.* (Emphasis added.)

[46] In connection with this, we are not inclined to agree with the view of the election judge in Masjid Tanah's appeal that proviso (a) of s 38(1) of the EOA must be read independently of the said section. The decision by this court in *Chor Phaik Har*'s case cited by the election judge does not support the view. In that case, Edgar Joseph Jr FCJ said this:

> *However, the words of the proviso must be read in their context. By this is meant, we must not only read the words of the proviso in the light of s 322 as a whole but also in the light of the Code as a whole.* Thus, it was said by the court in *Arataki Honey Ltd v Minister of Agriculture and Fisheries* [1979] 2 NZLR 311 at 316:
>
> > *The Act must be read as a whole and that all sections must be read bearing in mind the provisions of other sections*. It is not necessary for one section to refer specifically to another section before the first section can be construed as being subject to or overriding or in some other way qualifying the other section.
>
> So, also, in *Canada Sugar Refining Co v The Queen* [1898] AC 735 Lord Davey said (at p 741):
>
> > Every clause of a statute should be construed with reference to the context and other clauses in the Act, so far as, possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter. (Emphasis added.)

[47] The section must apply before the proviso of the section can have any application. Both must be read together. In other words, the proviso of a section must not be read in isolation from the said section. This court in *Tan Sri Eric Chia Eng Hock v Public Prosecutor (No 1)* [2007] 2 MLJ 101; [2007] 1 CLJ

565 further explained the application of a proviso as follows:

> This raises the question of whether art 128(3) *can be read as a proviso to* art 121(2)(a). In *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v Subhash Chandra Yograj Sinha AIR* [1961] SC 1596 Hidayatullah J said that as a general rule *a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule*. In *Local Government Board v South Stoneham Union* [1909] AC 57 Lord MacNaghten said that *a proviso can be a qualification of the preceding enactment which is expressed in terms too general to be quite accurate*. The proper way to regard a proviso is as a limitation upon the effect of the principal enactment (see *Raj Rani v Dwarka Nath AIR* [1933] Oudh 491). Its function is to except and deal with a case which would otherwise fall within the general language of the main enactment (see *Vedehi Saran v Municipal Board, Kouch* [1978] All LJ 907). As *Bindra's Interpretation of Statutes*, (9th Ed) says at p 111:
>
> > *A proviso, which is in fact and in substance a proviso, can only operate to deal with a case, which but for it, would have fallen within the ambit of the section to which it is a proviso*. The section deals with a particular field and the proviso excepts or takes out or carves out from the field a particular portion, and therefore it is perfectly true that *before a proviso can have any application, the section itself must apply*. A proviso is nothing but an exception to the enacting clause. Its object is to cut down or qualify something which has gone before it. (Emphasis added.)

[48] Now we revert to the proviso (a) of s 38(1). For ease of reference, we reproduce the proviso below:

> (1) *Every election petition shall be presented within twenty-one days of the date of publication of the result of the election in the Gazette:*
>
> Provided that —
>
> (a) an election petition questioning the return or the election *upon the ground of a corrupt practice* and *specifically alleging a payment of money* or other act to have been *made or done since the date aforesaid* by the person whose election is questioned or by an agent of the person or with the privity of the person or his election agent in pursuance or in furtherance of such corrupt practice may, so far as respects such corrupt practice, *be presented at any time within twenty-eight days after the date of such payment or act*; (Emphasis added.)

[49] It is clear that the words of proviso (a), inter alia, an election petition on the ground of corrupt practice and payment of money made or done since the date aforesaid must be filed within 28 days after the date of the payment or act. The keywords is the payment or act done 'since the date aforesaid'. Reading the proviso together with s 38(1) of the EOA, which states that every election petition must be filed within 21 days of the date of publication of the result of the election in the *Gazette*, it is undoubtedly, that the words 'since the date aforesaid' in proviso (a) refer to the date of publication of the election's result in

the *Gazette*.

[50] It is the court's duty to give effect to the words in the proviso as enacted by Parliament, otherwise, the words 'since the date aforesaid' are meaningless or otiose. Certainly, Parliament does not legislate or act in vain. In the words of Eusoffe Abdoolcader SCJ in *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35; [1985] 1 CLJ 511:

> *The court however is not at liberty to treat words in a statute as mere tautology or surplusage unless they are wholly meaningless. On the presumption that Parliament does nothing in vain, the Court must endeavour to give significance to every word of an enactment, and it is presumed that if a word or phrase appears in a statute, it was put there for a purpose and must not be disregarded.* In *Quebec Railway, Light, Heat and Power Co Ltd v Vandry* [1920] AC 662, Lord Sumner in delivering the judgment of the Judicial Committee said (at p 676):
>
> > Secondly, there is no reason why the usual rule should not apply to this as to other statutes — namely, that effect must be given, if possible, to all the words used for the legislature is deemed not to waste its words or to say anything in vain. (Emphasis added.)

[51] We are unable to agree with the election judge in the Masjid Tanah's appeal that the failure to read proviso (a) and s 38(1) independently would make the words 'be presented at any time within twenty-eight days after the date of such payment or act' in the proviso redundant or meaningless. Based on our reasoning alluded to earlier, proviso (a) of s 38(1) of the EOA applies to any election petition on grounds of corrupt practice and payment of monies after the date of the publication of the election's result in the Gazette. In such cases, the election petition can be filed within 28 days after the date of such payment or act. This is also consistent with s 10 of the EOA which makes an offence for bribery even after an election if such action induced the voters to vote for the respondent and refrain them from voting for other candidates.

Section 10(a) of the EOA states:

> The following persons shall be deemed guilty of the offence of bribery:
>
> (a) every person who, before, during, or *after an election*, who directly or indirectly, by himself or by any other person on his behalf, *gives*, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, *any money* or valuable consideration to or for *any elector or voter*, or to or for any person on behalf of any elector or voter or to or for any other person, to *induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any election;* (Emphasis added.)

[52] Therefore, the issue of redundancy about proviso (a) of s 38(1) of the

EOA as opined by the election judge in the Masjid Tanah's appeal does not arise. Thus, on the timeline for filing an election petition, we agree with the decision of the election judges in *Mahdi Hasan*, *Raymond bin Ahuar*, *Yusuf Abdul Rahman*, *Mohamad Ali bin Mohamad*, and also the election judge in the Kemaman's appeal.

[53] In the present appeal, the date of publication of the result of the election in the *Gazette* was 14 December 2022 and the election petition was filed on 3 January 2023. As such, the petition was filed within 21 days after the said publication as required under s 38(1). In the circumstances, the election judge erred in applying proviso (a) of s 38(1) and taking into account the alleged bribery on 19 November 2022, the 28 days ended on 17 December 2022, and therefore ruled that the filing of the election petition on 3 January 2023 was out of time.

The issue of sufficiency of material facts and grounds relied on to sustain the prayer in the election petition under s 32(a) and (c) of the EOA and r 4(1)(b) of the EPR

[54] On the sufficiency of material facts and grounds, it is trite that the election petition must contain the brief facts and grounds relied upon as required under r 4(1)(b) of the EPR which states:

> 4(1) An election petition shall contain the following statements:
>
> ...
>
> (b) it shall state the holding and result of the election, and *shall briefly state the facts and grounds relied on to sustain the prayer*. (Emphasis added.)

[55] Further, an election of a candidate can be declared void on the grounds as mentioned under s 32(a)–(e) of the EOA, and for these appeals the relevant grounds relied on are s 32(a) and (c) which states as follows:

> 32. *The election of a candidate at any election shall be declared to be void* on an election petition on any of the following grounds only which may be proved to the satisfaction of the Election Judge:
>
> (a) that *general bribery, general treating*, or general intimidation have so extensively prevailed that they may be reasonably supposed to have affected the result of the election;
>
> (b) ...
>
> (c) that a *corrupt practice* or illegal practice was committed in connection with the election *by the candidate* or *with his knowledge or consent, or by any agent of the candidate;* (Emphasis added.)

[56] To comply with the requirement of r 4(1)(b) of the EPR, the pleaded facts and grounds relied on must be sufficient to constitute a cause of action

and make out a case against the respondent. In regards to the alleged offence of bribery or corrupt practice, what is pertinent is the brief facts that constitute the elements of the offence of bribery or treating and how the respondent has offended the law. This is pertinent for the respondent to answer the charge or charges against them.

(See also *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors* [2009] 3 MLJ 589; [2009] 3 CLJ 221 (FC); and *Tan Sri Joseph Kurup v Danny Anthony Andipai & Anor* [2009] 3 MLJ 1 (FC).)

The Masjid Tanah's appeal

The alleged bribery offence under s (10)(a) of the EOA

[57] In respect of the Masjid Tanah's appeal, the pleaded facts for the alleged bribery offence by the respondent or with her knowledge or with her consent or through her agents were laid down in para 7 of the election petition. We find it necessary to reproduce the said paragraph:

> 7.1 Pada hari pengundian *19 November 2022* dari jam di antara *9.00 pagi hingga 5.00 petang* satu *pemberian dan/atau penyogokan wang* berjumlah di antara RM50.00, RM100.00 dan RM300.00 di dalam sampul surat berwarna putih ('wang tersebut') telah berlaku sebegitu berleluasa *kepada pemilih-pemilih dan/atau pengundi-pengundi berdaftar* dan/atau pengundi luar yang balik mengundi di *bahagian pilihan raya Parlimen Masjid Tanah oleh Responden atau dengan pengetahuan Responden atau persetujuan Responden atau arahan Responden.*
>
> 7.2 Pada hari pengundian *19 November 2022* dari jam di antara *9.00 pagi hingga 5.00 petang* seorang *ejen kepada Responden* yang bernama AKMAL ZAHIN BIN ZAINAL TAHIR ('Akmal Zahin') Pengerusi Tetap Armada Parti Pribumi Bersatu Malaysia yang merupakan komponen dalam parti Perikatan Nasional yang mewakili Responden telah *memberikan wang* berjumlah RM50.00, RM100.00 dan RM300.00 yang diisikan dalam sampul surat bewarna putih ('wang tersebut') kepada pemilih-pemilih dan/atau *pengundi-pengundi berdaftar* dan/atau pengundi luar yang balik mengundi di bahagian pilihan raya Masjid Tanah sebegitu berleluasa *di perkarangan rumah yang beralamat di SU 1232, Jalan Masjid Tanah Ria 5, Taman Masjid Tanah Ria, 78300 Masjid Tanah, Melaka* ('Rumah yang terletak di belakang Pizza Hut Masjid Tanah') yang didaftarkan di atas nama SUHAIDA BINTI SHAHARDIN.
>
> 7.3 Pada hari pengundian 19 November 2022 dari jam di antara *9.00 pagi hingga 5.00 petang* seorang lagi *ejen kepada Responden* yang bernama NOORASHIMAH BINTI NORDIN ('Noorashimah') juga *telah memberikan wang* berjumlah RM50.00, RM100.00 dan RM300.00 yang diisikan dalam sampul surat bewarna putih ('wang Tersebut') kepada pemilih-pemilih dan/atau *pengundi-pengundi berdaftar* dan/atau pengundi luar yang balik mengundi di bahagian pilihanraya Parlimen Masjid Tanah sebegitu berleluasa *di dalam rumah yang beralamat di SU 1232, Jalan Masjid Tanah Ria 5, Taman Masjid Tanah Ria, 78300 Masjid Tanah Melaka* ('rumah yang terletak di belakang Pizza Hut Masjid Tanah') yang

A didaftarkan di atas nama SUHAIDA BINTI SHAHARDIN.

7.4 Wang tersebut telah diberikan kepada pemilih-pemilih dan/atau pengundi-pengundi berdaftar dan/atau pengundi luar yang balik mengundi di Bahagian Pilihan Raya tersebut *bagi mendorong mereka untuk mengundi Responden yang merupakan calon Perikatan Nasional ('PN')* di Bahagian Pilihan Raya tersebut. (Emphasis added.)

B

[58] The material allegation of facts in para 7.1 is that on 19 November 2022, between 9am to 5pm, payments of monies of either RM50, RM100, or
C RM300 were given to the registered voters of the Masjid Tanah Parliamentary Constituency by the respondent or with her consent or knowledge or upon her instruction. The purpose of giving the monies was to induce the voters to vote for the respondent as stated in para 7.4

D **[59]** Paragraph 7.2 read with para 7.4, on the other hand, alleged that at the same time and date, in front of a house at SU 1232, Jalan Masjid Tanah Ria 5, Taman Masjid Tanah Ria, the respondent's agent, Akmal Zahin gave the same amount of monies to the registered voters in the Constituency for them to vote for the respondent.

E

[60] Next, para 7.3 read with para 7.4, states that at the same time, date, and place, another respondent's agent, Noorashimah, gave the same amount of monies to registered voters to induce them to vote for the respondent.

F

[61] Three registered voters who have been identified for receiving the monies as mentioned in para 7.11 were Junaidah bt Abdul Rahim, Mohd Hafiz Iskandar bin Mohd Jamil, and Bukhari bin Md Noor.

G **[62]** Having considered the material facts in the election petition as mentioned above, we find that the facts and grounds pleaded are sufficient to constitute a cause of action on the offence of bribery under s 10(a) of the EOA. All the necessary elements for the said offence have been pleaded which are at the date, time, and place, the respondent and through her agent had given
H monies to the registered voters of the Masjid Tanah Parliamentary Constituency to induce them to vote for the respondent. There is no ambiguity in the charges against the respondent as pleaded for the respondent to answer the case against her in the trial. Thus, the election judge has erred on this issue.

I The alleged offence of treating under s 8 of the EOA

[63] In the election petition, the relevant pleaded facts for the offence of treating are in para 8 which, inter alia, states:

8.1 *Responden secara sendiri* dan/ atau *wakilnya* dan/atau *ejennya* melalui satu

hantaran pada 30.11.2022 di dalam media TIK TOK @ emysamsudin telah *menjemput semua pemilih dan/atau pengundi* bersama famili di dalam *bahagian Parlimen Masjid Tanah* ke *Kenduri Kesyukuran* Jentera dan Sukarelawan anjuran Parti Perikatan Nasional yang diwakili Responden dan PDM Pasir Gembur yang akan diadakan pada *3hb Disember 2022 jam 8.30 malam* di *Dataran Pasir Gembur.*

8.2 Sehubungan dari jemputan tersebut *satu penjamuan besar-besaran* yang diberi nama *Majlis Kenduri Kesyukuran* Jentera dan Sukarelawan ('Kenduri Kesyukuran tersebut') *anjuran Responden* di bawah Parti Perikatan *Nasional yang diwakilinya telah diadakan untuk pengundi dan/atau pemilih berdaftar* di dalam bahagian pilihan raya Parlimen Masjid Tanah *pada 3hb Disember, 2022 jam 8.30 malam di Markas PAS Pasir Gembur* dalam *bahagian pilihan raya Parlimen Masjid Tanah* yang telah dihadiri secara beramai-ramai oleh pengundi dan atau pemilih di dalam bahagian pilihan raya Parlimen Masjid Tanah.

8.3 Di antara aktiviti Kenduri Kesyukuran tersebut adalah seperti berikut:

(a) *Jamuan makan malam* secara buffet dan berhidang nasi, ayam goreng, kari, buah-buahan;

(b) *Cabutan bertuah barangan dan hamper;*

(c) Alunan qasidah;

(d) Penyerahan borang keahlian Parti Peribumi Bersatu Malaysia.

8.4 Diantara pengundi dan/atau pemilih yang telah hadir dan/atau dikenalpasti hadir ke penjamuan besar-besaran tersebut adalah:

(a) Khairudin bin Hj Bakar (No. K/P: 700723-04-5593)

(b) Baharudin bin Bakar (No. K/P: 690217-04-5367)

(c) Mohd Zaini bin Bakar (No. K/P: 731210-04-5151)

8.5 Penjamuan besar-besaran dan cabutan bertuah yang dihadiri pemilih-pemilih dan pengundi-pengundi berdaftar di dalam Bahagian pilihan raya Parlimen Masjid Tanah pada 3hb Disember, 2022 telah didaftar sebelum keputusan Pilihanraya tersebut diwartakan telah dipengaruhi dan didorongi untuk mengundi Responden seperti berikut:

(a) *untuk mempengaruhi dan mendorong secara rasuah* secara berterusan (continuously) selepas penyogokan yang diberi pada 19hb November 2022 untuk *pemilih-pemilih dan/atau pengundi-pengundi berdaftar di bahagian pilihan raya Parlimen Masjid Tanah untuk memberikan undi kepada Responden;*

(b) *untuk mempengaruhi dan mendorong secara rasuah* secara berterusan (continuously) selepas penyogokan yang diberi pada 19hb November 2022 untuk *pemilih-pemilih dan/atau pengundi-pengundi* berdaftar di bahagian pilihan raya Parlimen Masjid Tanah *untuk memberikan undi kepada Responden* apabila petisyen pilihanraya di bawa ke Mahkamah Pilihanraya bagi mencabar keputusan Pilihanraya tersebut.

(c) Secara rasuah *sebagai penghargaan kepada pemilih-pemilih dan/atau pengundi-pengundi berdaftar* di bahagian pilihan raya Parlimen Masjid

Tanah *yang telah memberikan undi kepada Responden.* (Emphasis added.)

[64] The material facts that can be gleaned from paras 8.1–8.5 of the election petition alluded to above are that the respondent or through her agent had organised a feast and provided food and other valuable consideration for the registered voters of the Masjid Tanah Parliamentary Constituency to corruptly influence the voters to vote for the respondent. The place, time, and date were pleaded and three registered voters who attended the feast are specifically mentioned in para 8.4 who were Khairudin bin Hj Abu Bakar, Baharuddin bin Bakar and Mohd Zaini bin Bakar.

[65] In the circumstances, we find that the material facts pleaded in the election petition if proven were sufficient to establish the offence of treating under s 8 of the EOA. All the elements of the offence of treating and how the offence was allegedly committed, we find, were sufficiently pleaded. For ease of reference s 8 of the EOA reproduced:

> 8. *Treating.*
>
> Every person who*, corruptly, by himself* or *by any other person*, either *before, during or after an election*, directly or indirectly gives or *provides or causes to be given or provided*, or is accessory to the giving or providing, or pays or engages to pay wholly or in part, the expense of giving or providing *any food, drink*, refreshment *or provision*, or any money or ticket or other means or device to enable the procuring of any food, drink, refreshment or provision, to or for any person *for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election* or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector or voter who corruptly accepts or takes any such food, drink, or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such food, drink, refreshment or provision *shall be guilty of the offence of treating.* (Emphasis added.)

[66] In the circumstances, it is our considered view that the appellant's election petition has not suffered any defect of insufficient material facts or grounds that infringed 4(1)(b) of the EPR and fulfilled the requirements of s 32(a) and (c) of the EOA. As such the election judge erred in his decision that there were insufficient material particulars in the appellant's petition.

[67] On the issue of agency, counsel for the respondent submitted that the facts or particulars of appointment or employment of the agent were not pleaded in the petition, making the petition defective. The Federal Court case of *Wan Sagar bin Wan Embong* was cited to support the contention.

[68] In the present appeal, two agents of the respondent, Akmal Zahin bin Zainal Tahir and Noorashimah binti Nordin were named in the petition and the pleading in para 7.2 and 7.3 detailed their involvement in the corrupt practice as agents of the respondent. The offences of treating under s 8 of the EOA and bribery under s 10 of the same Act, inter alia, make it an offence for every person who corruptly, by himself or *by any other person* to commit the corrupt practice. What was pleaded in the petition, inter alia, was that the corrupt practices were committed not only by the respondent but, by other persons that were the agents of the respondent, Akmal Zahin and Noorashimah. We find that the material facts were sufficiently pleaded for the respondent to answer the case against her under ss 8 and 10 of the EOA.

[69] The word 'agent' does not appear in ss 8 or 10 of the EOA, if the agency is pleaded in an election petition, it merely falls under the category of 'by any other person' envisaged under those sections. That is the reason why the scope of an agency under the election law is wider compared with an ordinary agency. This is lucidly explained by Raja Azlan Shah (as His Royal Highness then was) in *Ali Amberan v Tunku Abdullah* [1970] 2 MLJ 15b in the following words:

> Inspired and guided by the English and Indian election law, I take the view that the rule of extended scope of agency holds good in our election law; any other view would tend to make it impossible to preserve the purity and freedom of elections. Accordingly *a candidate at an election is responsible for the acts of agents who are not and would not necessarily be agents under the common law of agency. Therefore a political party and its prominent members who set up the candidate and with his consent, either expressly or by necessary implication, sponsor his cause and work actively to promote his election, may aptly be regarded the 'agents' of the candidate for election purposes.* (Emphasis added.)

[70] In the circumstances and the present appeal, whether Akmal Zahin and Noorashimah were the respondent's agents with the express consent or by necessary implication are matters of evidence to be established during the trial and evidence need not be stated in the election petition as provided under r 5 of the EPR.

[71] We also need to emphasise here that there is no requirement under the election law in particular r 4(1)(b) of the EPR that the election petition must contain the particulars of how the petitioner's agent was appointed. What is required, inter alia, is to state briefly the facts and grounds relied on to sustain the prayer. Thus, if there is no such requirement, there cannot be any breach of the law. The analogy can be made from the decision of this court in the case of *Lee Kew Sang v Timbalan Menteri Dalam Negeri Malaysia & Ors* [2005] 2 MLJ 631; [2005] 3 CLJ 914 which states as follows:

A That being the law, it is the duty of the courts to apply them. So, in a habeas corpus application where the detention order of the Minister made under s 4(1) of the Ordinance or, for that matter, the equivalent ss in ISA 1960 and DD(SPM) Act 1985, *the first thing that the courts should do is to see whether the ground forwarded is one that falls within the meaning of procedural non-compliance or not. To determine the* B *question, the courts should look at the provisions of the law or the rules that lay down the procedural requirements. It is not for the courts to create procedural requirements because it is not the function of the courts to make laws or rules. If there is no such procedural requirement then there cannot be non-compliance thereof. Only if there is that there can be non-compliance thereof and only then that the courts should consider whether, on the facts, there has been non-compliance.* (Emphasis added.)

C

[72] The decision of this court in *Wan Sagar*'s case can be distinguished as in that case, the facts to show the corrupt practice committed by the agent of the first respondent were not pleaded, unlike the present appeal. This is mentioned in para 23 in the grounds of judgment of that case as follows:

D

[23] Based on the factual circumstances of the present case *we find the learned Election Judge is correct in requiring the appellant to plead facts and grounds to show that the corrupt practice was committed, inter alia by any 'agent' of the first respondent. This, the appellant has failed to do so.* (Emphasis added.)

E

[73] In the present case before us, the failure to state the particulars of the manner agents of the respondent were appointed or employed, we find, is not fatal or infringed any provision of the election law that makes the election petition defective.

F

[74] Further, we find, there is no issue of overlapping of the subject matter in the election petition that infringed r 4(2) of the EPR which states:

The petition shall be divided into paragraphs, each of which, as nearly as may be, *shall be confined to a distinct portion of the subject* and every paragraph shall be G numbered consecutively, and no costs shall be allowed for drawing or copying any petition not substantially in compliance with this rule unless otherwise ordered by the court or a Judge. (Emphasis added.)

H **[75]** As alluded to earlier, the alleged offences against the respondent are corrupt practices which are treating, an offence under s 8, and bribery, an offence under s 10 of the EOA. The alleged material facts on the offence of bribery were placed under para 7 of the election petition, in particular paras 7.1, 7.2, 7.3, and 7.4. and the relevant material facts for the offence of treating were pleaded separately under para 8 and in particular paras 8.1, 8.2, 8.3, 8.4, I and 8.5. Having considered the petition in totality, including paras 7 and 8, we find, the petition did confine to a distinct portion of the subject. As such, the contention that the petition infringed r 4(2) of the EPR is without merit.

The Kemaman's appeal

[76] In the Kemaman's appeal, the grounds to declare the election result of the Kemaman Parliamentary Constituency void is corrupt practices where it was pleaded in the election petition that the voters were bribed by the respondent's agents for them to vote for the respondent. The bribery was allegedly given by the agents as particularised in paras 7 and 9 of the election petition.

[77] The relevant facts in para 7 are as follows:

> 7.1 Pada sekitar 18.11.2022, seorang pengundi atau pemilih di dalam Bahagian Pilihan Raya tersebut yang bernama Md Noordin bin Awang (No. KP: 581017-03-5479) ('En Noordin') telah menerima sejumlah wang *dari ejen PAS* untuk mendorong En Noordin bagi mengundi Responden semasa PRU15.
>
> 7.2 Semasa PRU15, seorang lagi pengundi atau pemilih di dalam Bahagian Pilihan Raya tersebut yang bernama Mohd Faizol bin Md Noordin (No. KP: 900620-11-5671) ('En Faizol') telah mengakui bahawa beliau dan beberapa ahli keluarga beliau yang merupakan pengundi-pengundi berdaftar di Bahagian Pilihan Raya tersebut ada menerima sejumlah wang dalam lingkungan RM200.00-RM600.00 dari *ejen Responden.* Pemberian wang ini adalah bagi mendorong En Faizol untuk mengundi Responden semasa PRU15.
>
> 7.3 Semasa PRU15, dua orang pengundi atau pemilih berdaftar di Bahagian Pilihan Raya tersebut ('Dua orang pengundi tersebut') ada menerima sejumlah wang dari *ejen kepada Responden*.
>
> 7.4 Maklumat berkenaan dua orang pengundi tersebut adalah seperti berikut:
>
> (i) Zawiah binti Muhammad (No. KP: 830220-11-5700); dan
>
> (ii) Muhammad Farhan Haikal bin Md Noordin (No. KP: 990827-06-5343)
>
> 7.5 Sogokan wang ini yang telah diberikan oleh *ejen-ejen kepada responden* atas sebab untuk:
>
> (i) memastikan pengundi-pengundi berdaftar tersebut untuk mengundi Responden semasa PRU15 dan bukan calon-calon lain yang juga bertanding di Bahagian Pilihan Raya tersebut;
>
> (ii) memastikan kemenangan buat Responden di Bahagian Pilihan Raya tersebut semasa PRU15; dan
>
> (iii) *ejen-ejen kepada Responden* ini merupakan pekerja parti PAS yang bertugas semasa PRU15 untuk memenangkan PAS dan Responden di Bahagian Pilihan Raya tersebut.'

[78] Having analysed the allegation of facts in para 7 above, we find that the missing link to establish the cause of action against the respondent for the offence of bribery under s 10 of the EOA is the failure to identify the alleged agents of the respondent. As s 10, inter alia, makes it an offence for the respondent by any other person, including the agents, to give bribe monies, a close nexus or relationship between the agent and the respondent needs to be

A shown. The identity of the agent has to be pleaded to enable the respondent to answer the allegation and the opportunity to refute them for being the respondent's agent. The omission to name the respondent's agent, we find makes the facts pleaded insufficient to sustain the prayer required under r 4(1)(b) of the EPR.

B (See also *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors*; *Mohd Zaid bin Ibrahim v P Kamalanathan a/l P Panchanathan & Ors* [2010] 6 MLJ 363; and *Re Pengkalan Kota bye-election Teoh Teik Huat v Lim Kean Siew & Anor* [1981] 1 MLJ 265; [1981] 1 LNS 1.)

C **[79]** In the election petition, the other corrupt practices pleaded are found in para 9, which essentially alleged that the respondent through his agents had given bribe monies to the voters in several ceremonies held in the Parliamentary Constituency of Kemaman to induce the voters to vote for the respondent.

D **[80]** The ceremonies where the bribe monies were allegedly given to the voters are as follows:

(a) 'Majlis Pengagihan Bantuan One-Off Ibu Tunggal, Orang Kurang
E Upaya, Pencen Rakyat DUN Chukai di Dewan Sri Amar, Kemaman':

As pleaded in para 9 of the election petition, in this ceremony which was held on 15 November 2022, during the campaign period of the GE15, YB Hanafiah bin Mat, member of Terengganu State Legislative Assembly for Chukai, acted as an agent of the respondent gave monies to
F the registered voters of the Kemaman Parliamentary Constituency who attended the ceremony to induce them to vote for the respondent;

(b) 'Majlis Penyerahan i-Belia Di Dewan Sri Amar, Kemaman pada 15.11.2022':

G In para 10, it was pleaded that on 15 November 2022, YB Hanafiah as the agent of the respondent gave RM150 to the registered voters to induce them to vote for the respondent.

(c) 'Majlis Penyerahan i-Siswa di Dewan Sri Amar, Kemaman pada
H 17.11.2022':

In para 11 of the election petition, it states that on 17 November 2022, YB Hanafiah as an agent of the respondent gave RM150 to the registered voters so they vote for the respondent;

I (d) 'Majlis Penyerahan i-Belia di Dewan Sri Amar, Kemaman pada 16.11.2022':

In the petition, para 12, it was pleaded that on 16 November 2022, YB Ab Razak bin Ibrahim, member of Terengganu State Legislative

Assembly for Air Putih, as an agent of the respondent gave RM150 to the registered voters who attended the ceremony to induce them to vote for the respondent;

(e) 'Majlis Penyerahan i-Siswa di DITC Teluk Kalong pada 17.11.2022':
Further, it was pleaded in para 17 that on the same date, 17 November 2022, YB Hishamuddin Abdul Karim, member of Terengganu State Legislative Assembly for Tepuh, as an agent of the respondent, gave RM150 to the registered voters who attended the ceremony to induce them to vote for the respondent;

(f) 'Majlis Penyerahan i-Belia di Kompleks Paya Lasir pada 14.11.2022':
In para 18, the appellant pleaded that on 14 November 2022, during the campaign period of the GE15, YB Wan Sukairi Wan Abdullah, member of Terengganu State Legislative Assembly for Wakaf Mempelam, as an agent of the respondent gave RM150 to the registered voters that attended the ceremony to induce them to vote for the respondent;

(g) 'Majlis Penyerahan i-Belia di Dewan Sivik Kerteh pada 16.11.2022':
Next, in para 19 of the petition, it was pleaded on 16 November 2022, during the campaign period of GE15, YB Saiful Azmi, member of Terengganu State Legislative Assembly for Kemasik, an agent of the respondent, gave RM150 to the registered voters who attended the event to induce them to vote for the respondent;

(h) 'Majlis Penyerahan i-Belia di Dewan Sivik Kerteh pada 17.11.2022':
In para20 of the petition, it was pleaded that on 17 November 2022, during the campaign period of GE15, YB Saiful Azmi, an agent of the respondent, gave RM150 to the registered voters of the Parliamentary Constituency of Kemaman who attended the event to induce them to vote for the respondent; and

(i) 'Program Bersama Menteri Besar Terengganu':
It was also pleaded in paras 13–16 that on 13 November 2022, in this event, RM600 was given to 2121 attendees and RM150 was given to 517 single mothers and 57 pensioners to induce them to vote for the respondent.

[81] Having considered the pleaded facts in the election petition, it is our view that in respect of all the ceremonies alluded to above, except 'Program Bersama Menteri Besar Terengganu' the elements of bribery and agency were pleaded sufficiently. The time, place, and the respondent's agent have been named. The payments of monies to registered voters to induce them to vote for the respondent were also specified clearly. Further, the group of receivers of the alleged corrupt payments has also been identified, they were the attendees of

the respective event. The case against the respondent was clearly pleaded and can be answered by the respondent without any confusion or difficulty.

CONCLUSION

[82] Based on the foregoing reasons, we unanimously allowed Appeal No 01(i)-4–02 of 2023(M) ('the Masjid Tanah's appeal') and Appeal No 02(i)-13–02 of 2023(T) ('the Kemaman's appeal). However, the Kemaman's appeal is only in respect of the allegation of facts in paras 9–12 and 17–20 of the election petition. Both the election petitions be remitted to the respective High Court to be tried on their merits before a different election judge.

Masjid Tanah's appeal allowed; Kemaman's appeal allowed only in respect of allegation of facts in paras 9, 10, 11, 12, 17, 18, 19 and 20 of election petitions; both election petitions remitted to respective High Court to be tried on their merits before a different election judge.

Reported by Dzulqarnain Ab Fatar